

**Appl. No** : 10/614,418  
**Filed** : July 3, 2003

### REMARKS

With this Amendment, Claims 1-40 are pending in the present application, Claims 6 and 12 are amended and new Claims 20-40 are added.

#### Related Co-Pending Applications

Applicants would like to call to the Examiner's attention the following related applications which are currently pending and which claim priority to the same parent as the present application: Application Serial No. 09/971,955 is being examined by Examiner Cuong Quang Nguyen in Art Unit 2811; Application Serial No. 10/614,489 is being examined by Examiner David Vu in Art Unit 2818; and Application Serial No. 10/615,524 is being examined by Examiner William Brewster in Art Unit 2823.

#### Allowable Subject Matter

Applicants note with appreciation the Examiner's indication that Claims 7, 11, and 13-16 would be allowable if rewritten in independent form. Claims 7, 13 and 15 have been rewritten as new independent Claims 20, 25 and 31 respectively, and new dependent Claims 21-24, 26-30 and 32-35 have been added to more completely define the invention. Thus, Applicants submit that Claims 20-35 are in condition for allowance.

#### Anticipation under 35 U.S.C. § 102

Claims 6 and 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,581,436 to Summerfelt et al. The Examiner asserted that Summerfelt's Figure 7 includes all the limitations of Claim 6. Applicants respectfully disagree. Nonetheless, Claim 6 has been amended to recite *inter alia*, "a first nucleation layer formed over the base layer and selected to induce a substantially uniform crystal orientation in subsequent layers formed thereon." Applicants submit that the prior art of record does not anticipate or render obvious Claim 6 as presented above.

With regard to Claim 9, Examiner asserted that Summerfelt et al. disclose the second nucleation layer being made of a material selected from a group including platinum. Applicant respectfully notes that the Markush group of Claim 9 does not include platinum. Thus, Claim 9 is not anticipated by Summerfelt et al.

Claims 12 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,406,445 to Fujii et al. The Examiner asserted that all of the features of Claim 12

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are shown in Figure 1 of Fujii et al. Applicants respectfully disagree. Nonetheless, Claim 12 has been amended to recite *inter alia*, “a first nucleation layer consisting essentially of a metal formed over the bottom electrode,” which is not taught or suggested by the prior art of record. Dependent Claim 17 also recites additional unique limitations. Thus, Applicant respectfully requests that the rejections of Claims 12 and 17 be withdrawn.

Obviousness under 35 U.S.C. § 103

Claims 8, 10, 18 and 19 were rejected as being unpatentable over Summerfelt or Fujii in combination with Azuma (US 5,581,436). As discussed above, independent Claims 6 and 12 are believed to be novel over Summerfelt and Fujii. Thus, Applicants submit that the addition of Azuma does not correct the deficiencies discussed above, and therefore Claims 8, 10, 18 and 19 are not rendered obvious by the prior art of record.

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CONCLUSION

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of all of the features or acts recited in a claim which distinguishes it over the prior art. Additionally, any argument made in support of the patentability of a single claim is intended to refer only to the claim which is addressed in the argument, and should not be read as influencing the interpretation of any other claims or claim limitations.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the present application and to place the claims into condition for allowance. Nevertheless, if any issues remain which can be resolved by telephone, the Examiner is respectfully requested to call Applicant's representative at the number indicated below in order to resolve such issues promptly.

Respectfully submitted,

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Dated: 2/20/04

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